

**DECISION
GRAFTON PLANNING BOARD**

MODIFICATION #1

**SPECIAL PERMIT (SP 2014-9)
SITE PLAN APPROVAL (SPA 2014-9)
Construct a 650 kW Solar Energy Generating Facility (solar farm)**

79 Old Upton Road, Grafton

**Borrego Solar Systems, Inc. (Applicant)
Christy Pease (Owner)**

Decision of the Grafton Planning Board (hereinafter the Board) on the petition of the Borrego Solar Systems, Inc., 1115 Westford Street, 2nd Floor, Lowell, MA 01851 (hereinafter the APPLICANT), for Modification a Special Permit and Site Plan Approval under Section 3.2.3.1 to construct a solar electric generating facility (solar farm) on property located at 79 Old Upton Road, Grafton MA and shown on Grafton Assessor's Map 85, Lot 2D and owned by the Christy Pease, 79 Old Upton Road, Grafton, MA 01519 (hereinafter the OWNER) by deed recorded in the Worcester District Registry of Deeds in Book 45869, Page 221.

I. BACKGROUND

The above referenced Application for Modification of Special Permit (SP 2014-9) and Site Plan Approval (SPA 2014-9) (hereinafter APPLICATION) was submitted on April 19, 2016. The Planning Board considered the Application at a properly posted meeting of said Board on June 13, 2016 (no testimony received) which was continued on July 11, 2016 and August 8, 2016. Notice of the public hearing and the subject matter thereof was published in the Grafton News on May 26 and June 2, 2016, and posted with Town Clerk's Office. Abutters were notified by First Class Mail. At the public hearing, all those wishing to speak to the petition were heard.

The following Board members were present throughout the public hearing: Chairman Michael Scully (Mullin Certification for August 8, 2016), Vice Chairman Robert Hassinger, Clerk David Robbins, Members Linda Hassinger and Tracy Lovvorn, and Sharon Carroll-Tidman. A site visit to observe existing conditions was conducted on August 1, 2016. Present were Chairman Michael Scully, Vice Chairman Robert Hassinger, Members Linda Hassinger and Tracy Lovvorn. Town Planner Joseph Laydon was also present. No deliberation of the Board was conducted during the site visit.

At the hearing Mr. Steve Borrego of Borrego Solar Systems, Inc. presented the Application. At the public hearing, all those wishing to speak to the petition were heard. Following public input the hearing was closed on August 8, 2016.

II. SUBMITTALS

The following items were submitted to the Board for its consideration of this application:

EXHIBIT 1. Application packet prepared and submitted by the Borrego Solar Systems, Inc., received April 19, 2016; consisting of the following:

DRAFT – 8/18/16

- Application for Modification of a Special Permit; dated February 25, 2016; 1 page.
- Certificate of Good Standing; signed by Treasurer / Collector's Office on March 29, 2016; 1 page.
- Certified Abutters List; dated March 1, 2016; 1 page.
- Sheet C-4.1 Landscape Plan – revised through February 29, 2016; prepared by Borrego Solar; 24" X 36"; black and white;; dated February 29, 2016; 1 page.

EXHIBIT 2. Site Photo; no date; received April 19, 2016; 8 ½" X 11"; color; 1 page.

EXHIBIT 3. Sheet C-4.1 Landscape Plan revised through February 29, 2016; prepared by Borrego Solar; 11" X 17"; black and white; received April 21, 2016; 1 page.

EXHIBIT 4. Email Correspondence; Subject: Mod. Of a Special Permit (SP 2014-9.1) & Site Plan Approval – Solar Electric Generating Facility – 79 Old Upton Road – Borrego Soar; submitted by Nancy Connors, Board of Health; dated and received April 28, 2016; 1 page.

EXHIBIT 5. Public Hearing Notice, stamped in with the Town Clerk on Mary 24, 2016; 1 page.

EXHIBIT 6. Public Hearing Sign-In Sheet, June 13, 2016; 1 page.

EXHIBIT 7. Email Correspondence with attachments; Fwd: 79 Old Upton Road Solar Farm; submitted by John Haggerty; dated and received July 8, 2016; 6 pages.

EXHIBIT 8. Public Hearing Sign-In Sheet, July 11, 2016; 1 page.

EXHIBIT 9. Written request to continue the Public Hearing to August 8, 2016, received at the July 11, 2016 Public Hearing; 1 page.

EXHIBIT 10. Public Hearing Sign-In Sheet, August 8, 2016; 1 page.

EXHIBIT 11. Mullin Certification for the August 8, 2016 Public Hearing for Michael Scully, dated ____; received ____; 1 page.

III. FINDINGS

At their meeting of _____, after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by _____, seconded by _____) voted ____-____ in favor to make the following Findings:

- F1. That determinations regarding the following findings are based upon the plans identified in this Decision, as well as the information and materials submitted and presented in association with the Application.
- F2. That determinations regarding the following findings are also predicated upon satisfactory completion of the work and site improvements shown on the Plans in accordance with this Decision, as well as all applicable Federal, State and Local regulations, except where modified by this Decision.
- F3. That the subject site is located within a Residential 40 (R40) zoning district (see EXHIBIT #1).

- F4. That this Application is for the modification of two previous approved permits: Special Permit SP 2014-9 and Site Plan Approval SP 2014-9. The Applicant is requesting several modifications including the following:
- Installation of a field stone wall (already completed at the time of Application).
 - Installation of green screening to be attached to the existing fence (already completed at the time of Application).
 - Revised screening plan as it relates to the abutting property at 7 Browns Road (some items already completed at the time of Application). The Applicant had reached a verbal agreement with the abutter to eliminate an area approved for clearing (which would improve screening), reorganize some of the approved plant material along the eastern boundary of the site to better improve screening for the abutter and to move six approved trees from the site onto their property in a location which would provide additional screening between them and the dirt access road which separates the abutter from the site (see EXHIBIT #3).
- F5. That during the public hearing the Board and the Applicant discussed the field stone wall which was installed prior to the Application for Modification and was not a part of the approved plan. The Applicant noted that they had uncovered the stones on site when they were installing the landscaping. The contractor was asked to keep the stone on site and someone was hired to build the existing wall which was installed in front of the installed landscaping
- F6. That during the public hearing the Board received testimony from John Haggerty of 90 Old Upton Road, the abutting property across the street from the Site. In addition to verbal testimony, Mr. Haggerty also submitted written testimony and photographs (see EXHIBIT #7). He outlined his concerns about the screening adequacy of the plantings and the green screening attached to the existing fencing which was not a part of the originally approved landscaping plan. Mr. Haggerty also noted that it may take 5 to 7 years for the landscaping to mature to the point where it would fully screen the solar panels by 100%. He further stated that it was his belief that the project was not built to plan with regards to the panel heights in relation to the site topography as he was able to see the solar field from his second floor. This visual impact will negatively affect his property values. He continues to contest the adequacy of the screening as approved in the original permit. The Board noted that the requested modifications were specific to the information submitted in the Application and asked Mr. Haggerty if he had any objections to the proposed changes in the landscape plan and the proposed green screening along three sides as discussed (see FINDING #F6). Mr. Haggerty stated that he did not.
- F7. That during the public hearing, the Board and Applicant discussed the proposed green screening which has been installed on the existing chain link fence but was not a part of the originally approved plan. The Board asked if the original approval allowed for the screening. The Applicant stated no but that they had installed it at the request of National Grid who wanted to provide additional site screening. It had been installed on all four sections of the fence and is intended to be temporary and will be removed once the installed vegetation reaches maturity. The Applicant stated that he had contacted the three immediate abutters who were most directly impacted. The abutters to the east at 7 Browns Road told him that they prefer the screening, the property owner who lives on the site to the west and owns the lot abutting to the north had no objections and the property owners at 90 Old Upton Road across the street objected to it. Mr. Haggerty, who was present at the hearing, reiterated his objection to the screening along the southern section of the fence as it was closest to property but

did not object to the screening along the west, north and east portions of the fence. The Board notes that it has not received any documentation or verbal confirmation from the property owners to the east and west – just the Applicant’s verbal testimony to that fact.

- F8. That during the public hearing, the Board and Applicant discussed the changes to the landscaping plan on the western perimeter of the site. The Applicant stated that they had spoken with the abutters and had made revisions to the landscaping plan based on their preferences (see FINDING #F4). The Board notes that the plan submitted as part of this Application shows the plant material to be moved including type and proposed new location but no revisions were made to the plan regarding the agreement to reduce clearing areas in the vicinity of the abutter’s property as well as changes in the field to move plantings along the eastern perimeter to increase screening.
- F9. That during the public hearing the Board and the Applicant discussed the planting plan. It was noted that excluding the requested modifications, the landscape and fencing plan had been executed according to the approved plan. Mr. Laydon noted that he verified in the field that the trees had been planted at the required 10 feet on center. The trees and other plant material will take between 5 and 7 years to mature at which point the site will be completely screened.
- F10. That during the public hearing, the Board and Applicant discussed the need for a site walk to observe the existing conditions and to have a better understanding of the issues raised by the Board and Mr. Haggerty. The Applicant agreed that a site visit would be useful. A site visit was conducted on August 1, 2016. Present were Chairman Michael Scully, Vice Chairman Robert Hassinger, Members Linda Hassinger and Tracy Lovvorn. Town Planner Joseph Laydon was also present. Upon return the Public Hearing on August 8th, the Board noted that the proposed modifications appeared to be reasonable given the location of the stone wall, the installed plant material and that the green screening had been removed from the southern section of the fence.
- F11. That the Board received email correspondence from the Board of Health regarding project review (see EX

At their meeting of [REDACTED], after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by [REDACTED], seconded by [REDACTED]) voted [REDACTED] - [REDACTED] in favor to make the following Findings:

- F12. With regard to Section 1.5.5(a) of the ZBL that based upon the Findings stated within this Decision ingress and egress to the property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe, **are / are not** adequate. The Board finds that the proposed modifications **do / do not** alter the site plan with regards to this requirement.
- F13. With regard to Section 1.5.5(b) of the ZBL, that based upon the Findings stated within this Decision, off-street parking and loading areas where required, and the economic, noise, glare, or odor effects of the Special Permit on adjoining properties and properties generally in the district **are / are not** satisfactory. The Board finds that the proposed modifications **do / do not** alter the site plan with regards to this requirement.

- F14. With regard to Section 1.5.5(c) of the ZBL that based upon the Findings stated within this Decision, refuse collection or disposal and service areas **are / are not** satisfactory. The Board finds that the proposed modifications **do / do not** alter the site plan with regards to this requirement.
- F15. With regard to Section 1.5.5(d) of the ZBL that based upon the Findings stated within this Decision screening and buffering with reference to type, dimensions and character **are / are not** adequate. The Board finds that the proposed modifications were acceptable based on the testimony received (see FINDINGS #F5 through #F9) and EXHIBITS submitted.
- F16. With regard to Section 1.5.5(e) of the ZBL, that based upon the Findings stated within this Decision, signs and exterior lighting with reference to glare, traffic safety, economic effect **is / is not** compatible and in harmony with properties in the district. The Board finds that the proposed modifications **do / do not** alter the site plan with regards to this requirement.
- F17. With regard to Section 1.5.5(f) of the ZBL, that based upon the Findings stated within this Decision, the required yards and other open space requirements **are / are not** adequate. The Board finds that the proposed modifications **do / do not** alter the site plan with regards to this requirement.
- F18. With regard to Section 1.5.5(g) of the ZBL, that based upon the Findings stated within this Decision, the proposed use as conditioned by the Special Permit Decision **is / is not** generally compatible with adjacent properties and properties in the district. The Board finds that the proposed modifications **do / do not** negatively alter the site plan with regards to this requirement (see FINDING #F15). No changes to the approved use are proposed.
- F19. With regard to Section 1.5.5(h) of the ZBL, that upon satisfying and complying with all applicable Board of Health requirements, and based upon the Findings stated within this Decision, there **will / will not** be any significant adverse impact on any public or private water supply. The Board finds that the proposed modifications **do / do not** alter the site plan with regards to this requirement.
- F20. With regard to Section 1.5.5(i) of the ZBL, that upon satisfying and complying with all applicable Board of Health requirements, and based upon the Findings stated within this Decision, there **will / will not** be any significant or cumulative impact upon municipal water supplies. The Board finds that the proposed modifications **do / do not** alter the site plan with regards to this requirement.
- F21. With regard to Section 1.5.5(j) of the ZBL that based upon the Findings stated within this Decision, protection of important historic, cultural and scenic landscapes with regard to the proposed **use is / is not** satisfactory. The Board finds that the proposed modifications **do / do not** negatively alter the site plan with regards to this requirement (see FINDING #F15 and #F18). No changes to the approved use are proposed.

IV. DECISION and CONDITIONS

At their meeting of _____, after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by _____, seconded by _____) voted _____ in favor to **GRANT / DENY** this Special Permit with the following conditions:

- C1. This Application for Modification, DECISION and CONDITIONS apply to both Special Permit (SP 2014-9) and Site Plan Approval (SPA 2014-9), each filed under separate cover. Unless modified by this Decision, all conditions of the previous approvals remain in full force and effect.
- C2. This Modification of Special Permit (SP 2014-9) and Site Plan Approval (SPA 2014-9) specifically authorizes the following modifications: installation of a fieldstone wall (see EXHIBIT #3), relocation of some landscaping material to abutting property (see EXHIBIT #3) as conditioned as part of this Decision; elimination of the requirement for clearing near the abutters at 7 Browns Road, and green screening fencing to be attached to the existing chain link fencing on the west, north and east perimeter only (see FINDING #F4).
- C3. The Owner and / or Applicant shall submit to the Board a written agreement between the Applicant, Owner and the abutting property owners at 7 Browns Road granting permission to the Applicant / Owner and/or their assigns to plant six (6) *Abies Balsamea* on their property as indicated on EXHIBIT #3. The agreement shall include information regarding the maintenance of the plant material such as watering to ensure the establishment the plantings as well their agreement to the reduced clearing as discussed by the Applicant (see EXHIBIT #F7). Said agreement shall be submitted within thirty (30) days of this Decision. Failure to meet this Condition shall require a modification of this DECISION.
- C4. Within thirty (30) days of this DECISION, the Applicant and/ or OWNER shall submit the following to the Planning Department:
- Four (4) full size plan sets (24" x 36") which includes the approved modifications on the landscape plan. All sheets to reflect the revision date.
 - An electronic copy in PDF format of the revised plan set with the recent revision date reflected on all sheets.
- C5. This Special Permit shall bind the Applicant and Owner and /or their future successors and assigns to all the conditions set forth in this Decision. Any change in management and/ or ownership of the solar generating facility shall require notification to the Planning Board within one month from the change in ownership / management of the solar facility.
- C6. The work authorized by this Special Permit shall be solely for the purposes noted within Condition #2 of this Decision. Changes to plan presented in this Application may be made only upon authorization from the Planning Board. Such authorization shall only be granted provided the Board finds that any change requested by the Applicant is not substantially different than the plan presented within the EXHIBITS of this Decision, and is consistent with the intent and purpose of this Decision. Requests for such change(s) shall be submitted in writing to the Planning Board.
- C7. Any Order of Conditions and/or permits issued by the Grafton Conservation Commission with respect to this application are hereby incorporated by reference and constitute a condition to this Special Permit Decision.
- C8. This Special Permit shall not take effect until the Decision has been recorded at the Worcester District Registry of Deeds (WDRD) and provided the Planning Board and the Building Department with a copy of such recording, including the WDRD Book and Page Number and/or Instrument Number.

- C9. By recording this Special Permit Decision in the Worcester District Registry of Deeds, the Applicant agrees to and accepts the conditions set forth in this Special Permit and Site Plan Approval Decision.

V. RECORD OF VOTE

Constituting a majority of the Planning Board, the following members voted - to **GRANT / DENY** the Applicant's request to Modify Special Permit (SP 2014-9) & Site Plan Approval (SPA 2014-9) as described in the Conditions of this DECISION for the solar facility at 79 Old Upton Road based on the information received at the public hearing and the aforementioned findings.

<u>Michael Scully, Chairman</u>	<u>AYE / NAY</u>	<u>Linda Hassinger, Member</u>	<u>AYE / NAY</u>
<u>Robert Hassinger, Vice Chairman</u>	<u>AYE / NAY</u>	<u>Tracy Lovvorn, Member</u>	<u>AYE / NAY</u>
<u>David Robbins, Clerk</u>	<u>AYE / NAY</u>		

DATE OF FILING OF DECISION: BY ORDER OF THE BOARD

Joseph Laydon, Town Planner

Date

cc: Applicant

- Owner
- Graves Engineering

- Board of Assessors
- Building Inspector

To Whom It May Concern: This is to certify that the 20 day appeal period has passed and there have been no appeals made to this office.

Donna Girouard, Town Clerk

Date